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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

Paula Chong,

Plaintiff,

v.

Martin O'Malley, Commissioner of
Social Security,

Defendant.

Case No. 1:24-cv-00376-SKO

**STIPULATION AND UNOPPOSED
MOTION FOR THE AWARD AND
PAYMENT OF ATTORNEY FEES
AND EXPENSES PURSUANT TO THE
EQUAL ACCESS TO JUSTICE ACT;
ORDER**

(Doc. 19)

IT IS HEREBY STIPULATED by and between the parties through their undersigned counsel, subject to the approval of the Court, that Plaintiff be awarded attorney fees and expenses in the amount of FIVE THOUSAND EIGHT HUNDRED FIFTY-SIX DOLLARS AND 00/100 (\$5,856.00) under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), and costs in the amount of ZERO dollars (\$0.00) under 28 U.S.C. §1920. This amount represents compensation for all legal services rendered on behalf of Plaintiff by counsel in connection with this civil action, in accordance with 28 U.S.C. §§ 1920, 2412(d).

1 Plaintiff was the prevailing party in this matter and Plaintiff is an individual
2 whose net worth does not exceed \$2,000,000 at the time the civil action was filed.

3 After the Court issues an order for EAJA fees to Plaintiff, the government will
4 consider the matter of Plaintiff's assignment of EAJA fees to Plaintiff's attorney.
5 Under *Astrue v. Ratliff*, 130 S. Ct. 2521, 2528-29 (2010), EAJA fees awarded by this
6 Court belong to the Plaintiff and are subject to offset under the Treasury Offset Program
7 (31 U.S.C. § 3716(c)(3)(B) (2006)). Any EAJA fees should therefore be awarded to
8 Plaintiff and not to Plaintiff's attorney. If, after receiving the Court's EAJA fee order,
9 the Commissioner (1) determines that Plaintiff has assigned his right to EAJA fees to
10 his attorney; (2) determines that Plaintiff does not owe a debt that is subject to offset
11 under the Treasury Offset Program, and (3) agrees to waive the requirements of the
12 Anti-Assignment Act, then the EAJA fees will be made payable to Plaintiff's attorney.
13 However, if there is a debt owed under the Treasury Offset Program, the Commissioner
14 cannot agree to waive the requirements of the Anti-Assignment Act, and the remaining
15 EAJA fees after offset will be paid by a check or electronic fund transfer (EFT) made
16 out to Plaintiff, but delivered to Plaintiff's attorney.

17
18 This stipulation constitutes a compromise settlement of Plaintiff's request for
19 EAJA attorney fees, and does not constitute an admission of liability on the part of
20 Defendant under the EAJA or otherwise. Payment of the agreed amount shall constitute
21 a complete release from, and bar to, any and all claims that Plaintiff and/or Counsel
22 including Counsel's firm may have relating to EAJA attorney fees in connection with
23 this action.

24 The parties further agree that the EAJA award is without prejudice to the right of
25 Plaintiff's attorney to seek attorney fees pursuant to Social Security Act § 206(b), 42
26 U.S.C. § 406(b), subject to the offset provisions of the EAJA. *See* 28 U.S.C. §
27 2412(c)(1) (2006).
28

Respectfully submitted,

Dated: November 27, 2024

/s/ Jonathan O. Peña

JONATHAN O. PEÑA

Attorney for Plaintiff

Dated: November 27, 2024

PHILLIP A. TALBERT

United States Attorney

MATHEW W. PILE

Associate General Counsel

Office of Program Litigation

Social Security Administration

By: * Marcelo N. Illarmo

Marcelo N. Illarmo

Special Assistant U.S. Attorney

Attorneys for Defendant

(*Permission to use electronic signature
obtained via email on November 27, 2024).

ORDER

Based upon the parties' Stipulation and Unopposed Motion for the Award and Payment of Equal Access to Justice Act Fees and Expenses (the "Stipulation") (Doc. 19),

IT IS ORDERED that fees and expenses in the amount of FIVE THOUSAND EIGHT HUNDRED FIFTY-SIX DOLLARS AND 00/100 (\$5,856.00) as authorized by the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d) and costs in the amount of ZERO dollars (\$0.00) under 28 U.S.C. §1920, be awarded subject to the terms of the Stipulation.

IT IS SO ORDERED.

Dated: **December 2, 2024**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE